



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 281 and 282

[EPA-R04-UST-2019-0582; FRL-10014-89-Region 4]

South Carolina: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of South Carolina (South Carolina or State) has applied to the Environmental Protection Agency (EPA) for final approval of revisions to its Underground Storage Tank Program (UST Program) under subtitle I of the Resource Conservation and Recovery Act (RCRA or Act). Pursuant to RCRA, the EPA is taking direct final action, subject to public comment, to approve revisions to the UST Program. The EPA has reviewed South Carolina's revisions and has determined that these revisions satisfy all requirements needed for approval. In addition, this action also codifies the EPA's approval of South Carolina's revised UST Program and incorporates by reference those provisions of the State statutes and regulations that the EPA has determined meet the requirements for approval.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless the EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives adverse comment, it will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments by one of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov> (our preferred method).
Follow the online instructions for submitting comments.
- Email: singh.ben@epa.gov. Include the Docket ID No. EPA-R04-UST-2019-0582 in the subject line of the message.

Instructions: Submit your comments, identified by Docket ID No. EPA-R04-UST-2019-0582, via the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit: <https://www.epa.gov/dockets/commenting-epa-dockets>.

Out of an abundance of caution for members of the public and our staff, the public's access to the EPA Region 4 Offices is by appointment only to reduce the risk of transmitting COVID-19. We encourage the public to submit comments via <https://www.regulations.gov> or via email. The EPA encourages electronic comment submittals, but if you are unable to submit electronically or need other assistance, please contact Ben Singh, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. The index to the docket for this action and all documents

that form the basis of this codification and associated publicly available docket materials are available for review on the <https://www.regulations.gov> website. The EPA encourages electronic reviewing of these documents, but if you are unable to review these documents electronically, please contact Ben Singh to schedule an appointment to view the documents at the Region 4 Offices. Interested persons wanting to examine these documents should make an appointment at least two weeks in advance. EPA Region 4 requires all visitors adhere to the COVID-19 protocol, which requires face coverings and social distancing.

Please also contact Ben Singh if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

FOR FURTHER INFORMATION CONTACT: Ben Singh, RCRA Programs and Cleanup Branch, Land, Chemicals and Redevelopment Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960; Phone number: (404) 562-8922; e-mail address: singh.ben@epa.gov. Please contact Ben Singh by phone or email for further information.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to South Carolina's Underground Storage Tank (UST) Program

A. Why are revisions to state UST programs necessary?

States that have received final approval from the EPA under section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain a UST program that is no less stringent than

the Federal program. When the EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in title 40 of the Code of Federal Regulations (CFR) part 280. States can also initiate changes on their own to their UST programs and these changes must then be approved by the EPA.

B. What decision has the EPA made in this rule?

On April 16, 2019, in accordance with 40 CFR 281.51(a), South Carolina submitted a complete program revision application (State Application) seeking approval of changes to its UST Program. The program revisions requested in the State Application correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 state program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter from the Governor requesting approval; a description of the program and operating procedures; a demonstration of the State's procedures to ensure adequate enforcement; a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency; an Attorney General's Statement¹; and copies of all relevant State statutes and regulations. The EPA has reviewed the State Application and has determined that the revisions to South Carolina's UST Program are no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the South Carolina UST Program continues to provide adequate enforcement of compliance. Therefore, the EPA grants South Carolina

¹ 40 CFR 281.24(a) requires an Attorney General's statement, but allows it to be signed by independent legal counsel for the state rather than the Attorney General, provided that such counsel has full authority to independently represent the state agency in court on all matters pertaining to the state UST program. The South Carolina DHEC General Counsel has represented that it has such authority and has submitted such statement as part of the State Application.

final approval to operate its UST Program with the revisions described in the State Application, and as outlined below. The South Carolina Department of Health and Environmental Control (DHEC) is the lead implementing agency for the UST Program in South Carolina, except in Indian country as noted below in Section I.I.

C. What is the effect of this approval on the regulated community?

Section 9004(b) of RCRA, 42 U.S.C. 6991c(b), as amended, allows the EPA to approve state UST programs to operate in lieu of the Federal program. With this approval, the changes described in the State Application will become part of the approved State UST Program, and therefore will be federally enforceable. South Carolina will continue to have primary enforcement authority and responsibility for its State UST Program. This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already in effect in the State of South Carolina, and are not changed by this action. This action merely approves the existing State regulations as meeting the 2015 Federal Revisions and rendering them federally enforceable.

D. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and we anticipate no adverse comment. South Carolina addressed all comments it received during its comment period when the rules and regulations being considered in this document were proposed at the State level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is simultaneously publishing a separate document in the “Proposed Rules” section of this *Federal Register* that serves as the proposal to approve the State’s UST Program revisions, and provides an opportunity for public comment. If the EPA receives comments that oppose this approval, the EPA will withdraw this direct final rule by publishing a document in the *Federal Register* before it

becomes effective. The EPA will make any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, you must do so at this time.

F. For what has South Carolina previously been approved?

Effective September 27, 2002, the EPA granted final approval for South Carolina to administer the State UST Program in lieu of the Federal UST program (67 FR 55160, August 28, 2002). Effective June 9, 2014, the EPA incorporated by reference and codified the federally approved South Carolina UST Program (79 FR 19830, April 10, 2014). As a result of the EPA's approval, these provisions became subject to the EPA's corrective action, inspection, and enforcement authorities under RCRA sections 9003(h), 9005, and 9006, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions.

G. What changes is the EPA approving with this action and what standards do we use for review?

In order to be approved, each state program revision application must meet the general requirements in 40 CFR 281.11 (General Requirements), and the specific requirements in 40 CFR part 281, subpart B (Components of a Program Application), subpart C (Criteria for No Less Stringent), and subpart D (Adequate Enforcement of Compliance).

As more fully described below, the State has made changes to its UST Program to reflect the 2015 Federal Revisions. These changes are included in South Carolina's UST Rules at S.C. Code Ann. Regs. 61-92, as amended, effective May 26, 2017. The EPA is proposing to approve the State's changes because they are no less stringent than the Federal UST program, and because the revised South Carolina UST Program will

continue to provide for adequate enforcement of compliance as required by 40 CFR 281.11(b) and part 281, subparts C and D, after this approval.

DHEC continues to be the lead implementing agency for the UST Program in South Carolina. DHEC has broad statutory and regulatory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases, under the State Underground Petroleum Environmental Response Bank Act (SUPERB) of 1988, S.C. Code Ann. sections 44-2-10 to 44-2-150, and the South Carolina UST Rules at S.C. Code Ann. Regs. 61-92 (2017).

As part of the State Application, South Carolina has identified the following specific authorities for compliance monitoring, required pursuant to 40 CFR 281.40: S.C. Code. Ann. section 44-2-50(C); and S.C. Code. Ann. Regs. 61-92, section 280.34.

As part of the State Application, South Carolina has identified the following specific authorities for enforcement response, required pursuant to 40 CFR 281.41: S.C. Code. Ann. section 44-2-140; and S.C. Code. Ann. Regs. 61-92, sections 280.26 and 280.301.

As part of the State Application, South Carolina has identified the following specific authorities enabling public participation in the State enforcement process, required pursuant to 40 CFR 281.42: Rule 24(a)(2) of the South Carolina Rules of Civil Procedure; and S.C. Code. Ann. Regs. 61-92, section 280.67. Further, through a Memorandum of Agreement between DHEC and the EPA, effective October 12, 2018, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public, and DHEC will not oppose citizen intervention when permissive intervention is allowed by statute, rule or regulation. As required pursuant to 40 CFR 281.43, through the Memorandum of Agreement between the State and the EPA, the State agrees to furnish the EPA, upon request, any information in State files obtained or used in the administration of the State UST Program.

To qualify for final approval, revisions to a state's UST program must be no less stringent than the 2015 Federal Revisions. In the 2015 Federal Revisions, the EPA addressed UST systems deferred in the 1988 UST regulations, and added, among other things: new operation and maintenance requirements; secondary containment requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. South Carolina adopted all of the required 2015 Federal Revisions at S.C. Code. Ann. Regs. 61-92 (2017).

As part of the State Application, the DHEC General Counsel has certified that the State regulations provide for adequate enforcement of compliance and meet the no less stringent criteria in 40 CFR part 281, subparts C and D. The EPA is relying on this certification, in addition to the analysis submitted by the State, in approving the State's changes.

H. Where are the revised State rules different from the Federal rules?

States may enact laws that are more stringent than their Federal counterparts. *See* RCRA section 9008, 42 U.S.C. 6991g. When an approved state program includes requirements that are considered more stringent than those required by Federal law, the more stringent requirements become part of the federally approved program in accordance with 40 CFR 281.12(a)(3)(i). The EPA has determined that some of South Carolina's regulations are considered more stringent than the Federal program, and upon approval, they will become part of the federally approved State UST Program and therefore federally enforceable.

In addition, states may enact laws which are broader in scope than their Federal counterparts in accordance with 40 CFR 281.12(a)(3). State requirements that go beyond the scope of the Federal program are not part of the federally approved program and the

EPA cannot enforce them. Although these requirements are enforceable by the State in accordance with South Carolina law, they are not Federal RCRA requirements. The EPA considers the following State requirements to be broader in scope than the Federal program and therefore not part of the federally approved State UST Program:

Statutory Broader in Scope Provisions

- i. S.C. Code Ann. section 44-2-40, insofar as it provides for the creation of a SUPERB Account and SUPERB Financial Responsibility Fund (collectively, “State funds”), and establishes criteria for accessing the funds.
- ii. S.C. Code Ann. section 44-2-60, insofar as it requires registration, beyond the Federal notification requirements, and the payment of registration fees for underground storage tanks.
- iii. S.C. Code Ann. section 44-2-75, insofar as it provides for a means of establishing insurance pools to demonstrate financial responsibility.
- iv. S.C. Code Ann. section 44-2-90, insofar as it refers to interest collected on State funds and the sunset date of the environmental impact fee.
- v. S.C. Code Ann. section 44-2-110, insofar as it establishes criteria for qualified expenditure of funds from the SUPERB Account.
- vi. S.C. Code Ann. section 44-2-115, insofar as it regulates eligibility for the SUPERB Account.
- vii. S.C. Code Ann. section 44-2-120, insofar as it establishes requirements for site rehabilitation contractors.
- viii. S.C. Code Ann. section 44-2-130, insofar as it establishes criteria for compensation from the SUPERB Account.
- ix. S.C. Code Ann. section 44-2-150, insofar as it establishes provisions for the creation and operations of a SUPERB Advisory Committee.

Regulatory Broader in Scope Provisions

- i. S.C. Code Ann. Regs. 61-92, section 280.10(d), insofar as it requires UST systems to be permitted or registered with DHEC.
- ii. S.C. Code Ann. Regs. 61-92, section 280.20, as to the text “obtain permits in accordance with section 280.23 and” in the introductory paragraph, and the text “on the Permit to Operate application form in accordance with section 280.23” in (f), insofar as they require UST systems to be permitted by DHEC.
- iii. S.C. Code Ann. Regs. 61-92, sections 280.22(h) and (i), insofar as they require UST systems to be registered with DHEC.
- iv. S.C. Code Ann. Regs. 61-92, section 280.23, insofar as it requires UST systems to be permitted by DHEC.
- v. S.C. Code Ann. Regs. 61-92, sections 280.101(b) through (e), insofar as they establish regulations for the administration of the State funds.
- vi. S.C. Code Ann. Regs. 61-92, section 280.300, insofar as it gives DHEC broad authority to grant variances that may be beyond the scope of that allowed by the Memorandum of Agreement between DHEC and EPA.

I. How does this action affect Indian country (18 U.S.C. 1151) in South Carolina?

The EPA’s approval of South Carolina’s UST Program does not extend to Indian country as defined in 18 U.S.C. 1151, which includes the Catawba Indian Nation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. *See* 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing citations and references to a state's statutes and regulations that comprise a state's approved UST program into the CFR. The EPA codifies its approval of state programs in 40 CFR part 282 and incorporates by reference state statutes and regulations that the EPA can enforce, after the approval is final, under sections 9005 and 9006 of RCRA, and any other applicable statutory provisions. The incorporation by reference of EPA-approved state programs in the CFR should substantially enhance the public's ability to discern the status of the approved state UST programs and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of South Carolina's UST Program?

In 2014, the EPA incorporated by reference and codified South Carolina's approved UST Program at 40 CFR 282.90 (79 FR 19830, April 10, 2014). Through this action, the EPA is amending 40 CFR 282.90 to incorporate by reference and codify South Carolina's revised UST Program.

C. What codification decisions is the EPA making in this rule?

In this rule, the EPA is finalizing regulatory text that incorporates by reference the federally approved South Carolina UST Program, including the revisions made to the UST Program based on the 2015 Federal Revisions. In accordance with the requirements of 1 CFR 51.5, the EPA is incorporating by reference South Carolina's statutes and regulations as described in the amendments to 40 CFR part 282 set forth below. These documents are available through <https://www.regulations.gov>. This codification reflects the State UST Program that will be in effect at the time the EPA's approval of the revisions to the South Carolina UST Program addressed in this direct final rule becomes final. If, however, the EPA receives substantive comment on the proposed rule, this codification will not take effect and the State rules that are approved after the EPA

considers public comment will be codified instead. By codifying the approved South Carolina UST Program and by amending the CFR, the public will more easily be able to discern the status of the federally-approved requirements of the South Carolina UST Program.

Specifically, in 40 CFR 282.90(d)(1)(i), the EPA is incorporating by reference the EPA-approved South Carolina UST Program. Section 282.90(d)(1)(ii) identifies the State's statutes and regulations that are part of the approved State UST Program, although not incorporated by reference for enforcement purposes. Section 282.90(d)(1)(iii) identifies the State's statutory and regulatory provisions that are broader in scope or external to the State's approved UST Program and therefore not incorporated by reference. Section 282.90(d)(2) through (5) reference the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are part of the State Application and part of the UST Program under subtitle I of RCRA.

D. What is the effect of the EPA's codification of the federally approved South Carolina UST Program on enforcement?

The EPA retains the authority under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, and other applicable statutory and regulatory provisions, to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in South Carolina, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the State analogs. Therefore, the EPA is not incorporating by reference South Carolina's procedural and enforcement authorities, although they are listed in 40 CFR 282.90(d)(1)(ii).

E. What State provisions are not part of the codification?

As discussed in section I.H. above, some provisions of the State's UST Program are not part of the federally approved State UST Program because they are broader in scope than the Federal UST program. Where an approved state program has provisions that are broader in scope than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are broader in scope than the Federal program are not incorporated by reference for purposes of enforcement in part 282. *See* 40 CFR 281.12(a)(3)(ii). In addition, provisions that are external to the State UST Program approval requirements, but included in the State Application, are also being excluded from incorporation by reference in part 282. For reference and clarity, 40 CFR 282.90(d)(1)(iii) lists the South Carolina statutory and regulatory provisions which are broader in scope than the Federal program or external to state UST program approval requirements. These provisions are, therefore, not part of the approved UST Program that the EPA is codifying. Although these provisions cannot be enforced by the EPA, the State will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (EO) Reviews

The EPA's actions merely approve and codify South Carolina's revised UST Program requirements pursuant to RCRA section 9004, and do not impose additional requirements other than those imposed by State law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because UST program approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with RCRA;
- Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994); and
- Do not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. The rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting

errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This final action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 40 CFR Parts 281 and 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, Indian country, Petroleum, Reporting and recordkeeping requirements, State program approval, Underground storage tanks.

Authority: This action is issued under the authority of sections 2002(a), 7004(b), 9004, 9005, and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), 6991c, 6991d, and 6991e.

Dated: February 26, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

For the reasons set forth in the preamble, the EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Revise § 282.90 to read as follows:

§282.90 South Carolina State-Administered Program.

(a) *History of the approval of South Carolina's program.* The State of South Carolina (South Carolina or State) is approved to administer and enforce an underground storage tank (UST) program in lieu of the Federal program under subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA or Act), as amended, 42 U.S.C. 6991 *et seq.* The State's Underground Storage Tank Program (UST Program), as administered by the South Carolina Department of Health and Environmental Control (DHEC), was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. EPA approved the South Carolina UST Program on August 28, 2002 and it was effective on September 27, 2002. A subsequent program revision was approved by EPA and became effective **[INSERT DATE 60 DATES AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) *Enforcement authority.* South Carolina has primary responsibility for administering and enforcing its federally approved UST Program. However, EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under sections 9003(h), 9005, and 9006 of subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d, and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) *Retention of program approval.* To retain program approval, South Carolina must revise its approved UST Program to adopt new changes to the Federal subtitle I

program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If South Carolina obtains approval for revised requirements pursuant to section 9004 of RCRA, 42 U.S.C. 6991c, the newly approved statutory and regulatory provisions will be added to this subpart and notice of any change will be published in the *Federal Register*.

(d) *Final approval*. South Carolina has final approval for the following elements of its UST Program submitted to EPA and approved effective September 27, 2002, and the program revisions approved by EPA effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

(1) *State statutes and regulations--(i) Incorporation by reference*. The South Carolina materials cited in this paragraph (d)(1)(i), and listed in appendix A to this part, are incorporated by reference as part of the UST Program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.* The Director of the *Federal Register* approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may access copies of the South Carolina statutes and regulations that are incorporated by reference in this paragraph (d)(1)(i) from the South Carolina State Register, 223 Blatt Building, 1105 Pendleton Street, Columbia, South Carolina 29201; Phone number: (803) 212-4500; website: <https://www.scstatehouse.gov/>. You may inspect all approved material at EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303; Phone number: (404) 562-9900; or the National Archives and Records Administration (NARA), email: fedreg.legal@nara.gov, website: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(A) “South Carolina Statutory Requirements Applicable to the Underground Storage Tank Program,” dated September 9, 2020.

(B) “South Carolina Regulatory Requirements Applicable to the Underground Storage Tank Program,” dated September 9, 2020.

(ii) *Legal basis.* EPA considered the following statutes and regulations which provide the legal basis for the State's implementation of the UST Program, but they are not being incorporated by reference and do not replace Federal authorities:

(A) *State Underground Petroleum Environmental Response Bank Act (SUPERB) of 1988, S.C. Code Ann. sections 44-2-10 to 44-2-150 (2010).*

(1) Section 44-2-50(A) and (C) Regulations to be promulgated. Insofar as it provides for the promulgation of regulations for the implementation, compliance monitoring, and enforcement of the UST Program.

(2) Section 44-2-70(B) Financial responsibility of underground storage tank owners and operators. As to the first sentence, insofar as it provides for the promulgation of regulations specifying financial responsibility requirements and for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from operating an underground storage tank.

(3) Section 44-2-140 Enforcement of chapter or department order, penalties for violations. Insofar as it provides for compliance monitoring and enforcement of the underground storage tank requirements.

(B) *South Carolina Underground Storage Tank Control Regulations, R. 61-92 (2017).* (1) Section 280.26, Delivery Prohibitions. Insofar as it identifies specific authorities for enforcement response and delivery prohibition requirements.

(2) Section 280.67, Public Participation. Insofar as it identifies specific authorities for enabling public participation in the corrective action process.

(3) Section 280.301, Violations and Penalties. Insofar as it provides for notice to violators, assessment of penalties, criminal prosecution, and appeals under the SUPERB Act.

(4) Section 280.302, Appeals. Insofar as it provides for appeal of any determination by DHEC under the provisions of S.C. Code Ann. Regs. 61-72, Procedures for Contested Cases, and the State Administrative Procedures Act.

(C) *SUPERB Site Rehabilitation and Fund Access Regulations, R.61-98.*

Insofar as it contains requirements for site rehabilitation for releases from underground storage tanks, access to the SUPERB Account, and certification of site rehabilitation contractors.

(D) *South Carolina Rules of Civil Procedure, Rule 24(a)(2), Intervention.*

Insofar as it provides for public participation in the State enforcement process.

(iii) *Other provisions not incorporated by reference.* The following statutory and regulatory provisions applicable to the South Carolina UST Program are broader in scope than the Federal program or external to the state UST program approval requirements. Therefore, these provisions are not part of the approved UST Program and are not incorporated by reference herein:

(A) *State Underground Petroleum Environmental Response Bank Act*

(SUPERB) of 1988, S.C. Code Ann. sections 44-2-10 to 44-2-150 (2010).

(1) Section 44-2-40, insofar as it provides for the creation of a SUPERB Account and SUPERB Financial Responsibility Fund (collectively, “State funds”), and establishes criteria for accessing the funds.

(2) Section 44-2-50(B), is external insofar as it contains obligations on the State agency, not a regulated entity.

- (3) Section 44-2-60, insofar as it requires registration, beyond the Federal notification requirements, and the payment of registration fees for underground storage tanks.
- (4) Section 44-2-75, insofar as it provides for a means of establishing insurance pools to demonstrate financial responsibility.
- (5) Section 44-2-90, insofar as it refers to interest collected on State funds and the sunset date of the environmental impact fee.
- (6) Section 44-2-110, insofar as it establishes criteria for qualified expenditure of funds from the SUPERB Account.
- (7) Section 44-2-115, insofar as it regulates eligibility for the SUPERB Account.
- (8) Section 44-2-120, insofar as it establishes requirements for site rehabilitation contractors.
- (9) Section 44-2-130, insofar as it establishes criteria for compensation from the SUPERB Account.
- (10) Section 44-2-150, insofar as it establishes provisions for the creation and operations of a SUPERB Advisory Committee.
- (B) *South Carolina Underground Storage Tank Control Regulations, R.61-92 (2017)*. (1) Section 280.10(d), insofar as it requires UST systems to be permitted or registered with DHEC.
- (2) Section 280.20, as to the text “obtain permits in accordance with section 280.23 and” in the introductory paragraph, and the text “on the Permit to Operate application form in accordance with Section 280.23” in (f), insofar as they require UST systems to be permitted by DHEC.
- (3) Sections 280.22(h) and (i), insofar as they require UST systems to be registered with DHEC.

(4) Section 280.23, insofar as it requires UST systems to be permitted by DHEC.

(5) Sections 280.101(b) through (e), insofar as they establish regulations for the administration of the State funds.

(6) Section 280.240(b), is external insofar as it contains obligations on the State agency, not a regulated entity.

(7) Section 280.300, insofar as it gives DHEC broad authority to grant variances that may be beyond the scope of that allowed by the Memorandum of Agreement between DHEC and EPA.

(2) *Statement of legal authority.* The Attorney General's Statement and Statement of Independent Legal Counsel, signed by DHEC's General Counsel in lieu of the Attorney General on March 27, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The "Demonstration of Adequate Enforcement Procedures" submitted on April 16, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted on April 16, 2019, though not incorporated by reference, are referenced as part of the approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 4 and the South Carolina DHEC, signed by the EPA Regional Administrator on October 12, 2018, though not incorporated by reference, is referenced as part of the

approved underground storage tank program under subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Amend appendix A to part 282 by revising the entry for South Carolina to read as follows:

Appendix A to Part 282 - State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

South Carolina

(A) The statutory provisions include:

State Underground Petroleum Environmental Response Bank Act (SUPERB) of 1988, S.C. Code Ann. sections 44-2-10 to 44-2-150 (2010):

- | | |
|---------|--|
| 44-2-10 | Short Title. |
| 44-2-20 | Definitions. |
| 44-2-70 | Financial responsibility of underground storage tank owners and operators; except the first sentence of (B). |
| 44-2-80 | Release of regulated substance; containment, removal, and abatement. |

(B) The regulatory provisions include:

South Carolina Underground Storage Tank Control Regulations, R.61-92 (2017):

- | | |
|--------|---|
| 280.10 | Applicability, except (d). |
| 280.11 | Installation requirements for partially excluded UST systems. |
| 280.12 | Definitions. |

280.20	Performance standards for new UST systems, except for the text “obtain permits in accordance with section 280.23 and” in the introductory paragraph, and the text “on the Permit to Operate application form in accordance with Section 280.23” in (f).
280.21	Upgrading of Existing UST systems.
280.22	Notification requirements, except (h) and (i).
280.24	Testing.
280.25	Secondary containment required.
280.30	Spill and overfill control.
280.31	Operation and maintenance of corrosion protection.
280.32	Compatibility.
280.33	Repairs allowed.
280.34	Reporting and recordkeeping.
280.35	Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.
280.36	Periodic operation and maintenance walkthrough inspections.
280.40	General requirements for all UST systems.
280.41	Requirements for petroleum UST systems.
280.42	Requirements for hazardous substance UST systems.
280.43	Methods of release detection for tanks.
280.44	Methods of release detection for piping.
280.45	Release detection recordkeeping.
280.50	Reporting of suspected releases.

280.51	Investigation due to off-site impacts.
280.52	Release investigation and confirmation steps.
280.53	Reporting and cleanup of spills and overfills.
280.60	General.
280.61	Initial response.
280.62	Initial abatement measures and site check.
280.63	Initial site characterization.
280.64	Free product removal.
280.65	Investigations for soil and ground-water cleanup.
280.66	Corrective action plan.
280.70	Temporary closure.
280.71	Permanent closure and changes-in-service.
280.72	Assessing the site at closure or change-in-service.
280.73	Applicability to previously closed UST systems.
280.74	Closure records.
280.90	Applicability.
280.91	Compliance dates.
280.92	Definition of terms.
280.93	Amount and scope of required financial responsibility.
280.94	Allowable mechanisms and combinations of mechanisms.
280.95	Financial test of self-assurance.
280.96	Guarantee.
280.97	Insurance and risk retention group coverage.
280.98	Surety Bond.
280.99	Letter of credit.
280.100	Use of state-required mechanism [Reserved].

280.101	State fund or other state assurance, except (b) through (e).
280.102	Trust Fund.
280.103	Standby trust fund.
280.104	Local government bond rating test.
280.105	Local government financial test.
280.106	Local government guarantee.
280.107	Local government fund.
280.108	Substitution of financial assurance mechanisms by owner or operator.
280.109	Cancellation or non-renewal by a provider of financial assurance.
280.110	Reporting by owner or operator.
280.111	Recordkeeping.
280.112	Drawing on financial assurance mechanisms.
280.113	Release from the requirements.
280.114	Bankruptcy or other incapacity of owner or operator or provider of financial assurance.
280.115	Replenishment of guarantees, letters of credit, or surety bonds.
280.116	Suspension of enforcement [Reserved].
280.200	Definitions.
280.210	Participation in management.
280.220	Ownership of an underground storage tank or underground storage tank system or facility or property on which an underground storage tank or underground storage tank system is located.

- 280.230 Operating an underground storage tank or underground storage tank system.
- 280.240 General requirement for all UST systems, except (b).
- 280.241 Designation of Class A, B, and C operators.
- 280.242 Requirements for operator training.
- 280.243 Timing of operator training.
- 280.244 Retraining.
- 280.245 Documentation.
- 280.250 Definitions.
- 280.251 General Requirements.
- 280.252 Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

(C) Copies of the South Carolina statutes and regulations that are incorporated by reference are available from the South Carolina State Register, 223 Blatt Building, 1105 Pendleton Street, Columbia, South Carolina 29201; Phone number: (803) 212-4500; website: <https://www.scstatehouse.gov/>.